SUPREME COURT, U.S.
FILED
FEB 16 1993
OFFICE OF THE CLERK

92-1422

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

MURRAY M. MEEKER, PETITIONER

v.

COMMONWEALTH OF VIRGINIA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF VIRGINIA

MURRAY M. MEEKER, PRO SE
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WASHINGTON, DC 20415
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QUESTION PRESENTED

Whether the Virginia Supreme Court's dismissal of the petitioner's appeal to that court constituted a denial of due process under the Fourteenth Amendment to the United States Constitution?

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COMMONWEALTH OF VIRGINIA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Petitioner, Murray M. Meeker, respectfully prays that a writ of certiorari issue to review the dismissal order of the Virginia Supreme Court.

OPINIONS BELOW

The dismissal order of the Virginia Supreme Court is not reported. The dismissal order was issued on November 23,

1992, and appears in Appendix A to this Petition.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. 1257(a) based on a denial of Due Process under the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution is set forth in Appendix B to this Petition.

STATEMENT OF THE CASE

On November 23, 1992, the Supreme Court of Virginia dismissed the petitioner's appeal on the ground that the appeal had not been "perfected in the manner prescribed by law for failure to file with the Clerk of

the Court of Appeals of Virginia a notice of appeal pursuant to Rule 5:14(a)".

This matter began eight months prior to the Virginia Supreme Court's dismissal: On March 17, 1992, the petitioner was arrested for a minor traffic infraction in Fairfax County, Virginia, and on June 10, 1992, the petitioner was found guilty by the Fairfax County General District Court.

On June 16, 1992, the petitioner contacted the Clerk's office of the Fairfax County General District Court and was advised that he would have ten days from the date of the adverse judgment issued by the General District Court on June 10, 1992, in which to appeal, and that the appeal would be to the Circuit Court for the County of Fairfax. (See § 16.1-132, Code of Virginia.) The Clerk's office did <u>not</u> explain that the appeal would have to be

filed with the Fairfax County General District Court within ten days, and that the Fairfax County General District Court would then transfer the appeal to the Fairfax County Circuit Court at some later date.

By letter dated June 17, 1992, the petitioner appealed to the Fairfax County Circuit Court. However, on June 26, 1992, the petitioner was contacted by telephone and orally advised by the Fairfax County General District Court that his appeal had been rejected as untimely because while it had been timely received by the Fairfax County Circuit Court, it had not been transmitted by the Fairfax County Circuit Court to the Fairfax County General District Court until the following day and was, therefore, untimely by one day.

On July 1, 1992, the petitioner filed a Notice of Appeal with the Virginia Court of

Appeals. By motion received on July 15, 1992, the Commonwealth moved to dismiss on the ground that the Fairfax County Circuit Court never had jurisdiction; that the petitioner had not been aggrieved by any action of the Fairfax County Circuit Court because the Fairfax County Circuit Court had taken no action; and that the Virginia Court of Appeals could, therefore, not attain jurisdiction over this matter pursuant to § 17-116.05:1, Code of Virginia.

On July 20, 1992, the petitioner filed a Notice of Removal with the United States District Court for the Eastern District of Virginia, and on July 24, 1992, the United States District Court for the Eastern District Court remanded the matter to the Fairfax County Circuit Court.

On July 27, 1992, the petitioner filed a Motion for Clarification and/or Modifica-

tion with the United States District Court for the Eastern District of Virginia which the court denied on July 30, 1992.

By letters dated August 6, 1992, the petitioner advised both the Virginia Court of Appeals and the Fairfax County Circuit Court of the remand action and requested their assistance in advising him concerning the status of his appeal.

While not a member of the Virginia Bar, the petitioner noted a provision of the Virginia Code which provided that a failure by a clerk's office in Virginia to timely transmit documents should not be a basis to refuse or to dismiss an appeal; prior decisions from the Virginia Supreme Court which had held that statutory appeal provisions should be liberally construed so as to effectuate the purpose of their enactment; and decisions from this Court concerning equitable tolling: Section

8.01-679, Code of Virginia; Southern Ry. v. Hill, 106 Va. 501, 56 S.E. 278 (1907); Hampton Rds. San. Dist. Comm'n v. Smith, 193 Va. 371, 68 S.E.2d 497 (1952); Gravely v. Deeds, 185 Va. 662, 40 S.E.2d 175 (1946); and Irwin v. Veterans Administration, 498 U.S. 89, 111 S.Ct. 453, 458 n. 3 (1990), citing Burnett v. New York Central R. Co., 380 U.S. 424 (1965) and Herb v. Pitcairn, 325 U.S. 77 (1945).

The Fairfax County Circuit Court took no action in response to the petitioner's letter and/or to the remand order from the United States District Court for the Eastern District of Virginia. On August 18, 1992, the Virginia Court of Appeals dismissed the petitioner's appeal explaining only that there was no order of the circuit court from which an appeal could be taken.

On August 28, 1992, the petitioner sent the requisite filing fee to the Virginia Supreme Court accompanied by a letter that expressed his intention to appeal the decision of Virginia Court of Appeals. The petitioner indicated on his letter that a copy was being sent to the Virginia Court of Appeals. On September 3, 1992, the petitioner sent a certificate of service to the Virginia Supreme Court which formally advised that court that copies of his appeal letter had been sent to both the Virginia Court of Appeals and to the Assistant Commonwealth's Attorney.

Shortly after submitting the certificate of service, the petitioner received a letter dated September 2, 1992, from Deputy Clerk Deborah A.F. Uitvlucht of the Virginia Court of Appeals which advised him of the requirement in Rule 5A:1(b)(10) of the Rules

of Virginia Supreme Court that there must be "certification that a copy of this letter was mailed to opposing counsel." On January 25, 1993, Deputy Clerk Uitvlucht acknowledged in a telephone conversation with the petitioner that while the Virginia Court of Appeals did not maintain docket sheets, the court did have a computer docketing system which reflected that the petitioner's August 28, 1992 letter had been accepted as a Notice of Appeal by the Virginia Court of Appeals. Ms. Uitvlucht emphasized, however, that the Virginia Supreme Court rather than the Virginia Court of Appeals determined whether a Notice of Appeal had been satisfactorily filed.

At about the same time that the petitioner's letter of August 28, 1992, was acknowledged by the Virginia Court of

Appeals, the petitioner's August 28, 1992 letter was also acknowledged by the Virginia Supreme Court. By letter dated August 31, 1992, Chief Deputy Clerk Patricia H. Krueger of the Virginia Supreme Court formally acknowledged receipt of the petitioner's appeal letter and filing fee, explaining further, however, that the letter was insufficient as a petition for appeal to the Virginia Supreme Court. Chief Deputy Clerk Krueger's letter continued that she had enclosed a copy of Rule 5:17 "which states the requirements for a petition. Please note that your time limits are mandatory and a failure to follow them will result in a dismissal of your appeal."

On September 9, 1992, Chief Deputy Clerk Krueger contacted the petitioner by telephone after receiving the petitioner's

September 3, 1992 certificate of service, emphasizing that the letter and the certificate were still insufficient and that the petitioner must file a petition for appeal in compliance with Rule 5:17.

On September 11, 1992, the petitioner completed a Petition for Appeal which, on September 12, 1992, he mailed to the Virginia Supreme Court, the Virginia Court of Appeals, and to the Assistant Commonwealth's Attorney. By letter dated September 16, 1992, Chief Deputy Clerk Krueger acknowledged receipt of the petition, but continued that the petitioner had failed to notify the Virginia Supreme Court concerning whether or not he wished to "state orally to a panel of this Court the reasons why his petition for appeal should be granted". The petitioner can not emphasize too strongly that in none of these

communications from or with the Virginia Supreme Court -- the letter of August 31, 1992, the telephone call of September 9, 1992, or the letter of September 16, 1992 -- did the Virginia Supreme Court express the slightest indication that the petitioner had failed to comply with any of the legal requirements for filing an appeal with the Virginia Supreme Court.

Indeed, the Commonwealth's Motion to Dismiss Appeal which was sent to the petitioner on September 23, 1992, did not assert that there had been any failure with regard to the notice of appeal requirement.

Nonetheless, as previously stated, by decision dated November 23, 1992, theVirginia Supreme Court dismissed the petitioner's appeal for failure to file with the Clerk of the Court of Appeals of

Virginia a notice of appeal pursuant to Rule 5:14(a).

REASONS FOR GRANTING THE PETITION

More than forty years ago, Justice Frankfurter wrote an opinion in which he eloquently articulated what Due Process under the United States Constitution means. Anti-Fascist Committee v. McGrath, 341 U.S. 123, 161-163 (1951) (Frankfurter, J., concurring).

Justice Frankfurter explained that "fairness of procedure is due process in the primary sense"; that "It is ingrained in our national traditions and is designed to maintain them"; and that this Court "has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted demands of fair play enshrined in the Constitution."

Justice Frankfurter continued that "Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right" and that Due Process may be expressed as "that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization ... [r]epresenting a profound attitude of fairness between man and man, and more particularly between the individual and government... ." 341 U.S. at 162.

Regrettably, the record in the instant appeal establishes that the Commonwealth of Virginia has not kept the promise expressed by Justice Frankfurter that a State not deprive a person of all existing remedies for the enforcement of a right. Moreover, the Commonwealth, and particularly the

Supreme Court of Virginia, has abysmally failed to evoke a feeling of just treatment. Compare Board of Curators v. Horowitz, 435 U.S. 78, 88 (1978) (concerning the procedural requirements imposed on a court in contrast to those imposed on a university).

The record reflects that the petitioner was led to believe that he had done all that was required only to be told when it was too late that he had not. See Carlile v. South Routt School District, 652 F.2d 981 (10th Cir. 1981), as cited in Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151 (1984).

While the Virginia Supreme Court cited this Court's decision in Harris v. Reed, 489 U.S. 255 (1989), the reliance is wholly misplaced. This Court's decision in Harris does not authorize State courts to ignore

the requirements of Due Process simply by indicating that their decisions are based on procedural requirement of State law.[1]

Quite unlike the circumstances in Harris, there are, in fact, no adequate and independent State grounds to support the instant decision of the Virginia Supreme Court. See also American Pipe & Construction Co. v. Utah, 414 U.S. 538,559 (1974); Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946); and Herb v. Pitcairn, 324 U.S. 117, 120 (1945), citing Mondoy v. New York, N.H. & H.R. Co., 223 U.S. 1, 56-57 (1912).

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[1]While the petitioner does not assert that the Virginia Supreme Court has purposefully attempted to evade review by this Court, such efforts have been discussed by others. See, e.g., Antieau, Modern Constitutional Law, § 15:51, p. 753.

A litigant's right to Due Process is absolute; it does not depend upon the merits of the substantive assertions. Carey v. Piphus, 435 U.S. 247, 266 (1978), citing Boddie v. Connecticut, 401 U.S. 371, 375 (1971) and Anti-Fascist Committee v. McGrath, supra, at 161-163 (Frankfurter, J., concurring).

CONCLUSION

In 1991, a total of 1,633,440 new traffic cases were filed with general district courts in the Commonwealth of Virginia. Virginia State of the Judiciary Report 1991, fig. F-176. It must be presumed that this number will only increase in the years to come and with these increases there may well be pressure on the courts in Virginia to provide even less procedural due process unless this Court

makes it clear that even the most inconsequential traffic matter is subject to the Due Process guarantees of the United States Constitution.[2] For the reasons set forth above, a writ of certiorari should issue to review the decision of the Supreme Court of Virginia in this matter.

DATED: February 11, 1993.

Respectfully submitted,

Murray M. Meeker

MURRAY M. MEEKER
Petitioner, *Pro Se*

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[2]It should be noted that while millions of Americans appear in traffic courts each year, the costs of litigation are such that this Court will have very few opportunities to ensure that the judicial systems in the various States provide these Americans with all of the protections and guarantees that they are entitled to under the United States Constitution.

APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 23rd day of November, 1992.

Murray M. Meeker Appellant,

against Record No. 921434
Court of Appeals No. 1333-92-4

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Finding that the appeal was not perfected in the manner prescribed by law for failure to file with the Clerk of the Court of Appeals of Virginia a notice of appeal pursuant to Rule 5:14(a), the Court dismisses the petition for appeal filed in

the above-styled case. Harris v. Reed, 489 U.S. 255 (1989).

A Copy,

Teste:

David B. Beach, Clerk

By:

Deputy Clerk

APPENDIX B

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the

right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United

States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of

insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX C

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 18th day of August, 1992.

Murray M. Meeker, Appellant,

against Record No. 1333-92-4

Commonwealth of Virginia, Appellee.

From the Circuit Court of Fairfax County

Finding that there is no order of the circuit court from which an appeal can be taken, the Court dismisses the notice of appeal filed July 6, 1992.

A Copy,

Teste: Patricia G. Davis

Clerk